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8	NOT FOR CITATION
9	IN THE UNITED STATES DISTRICT COURT
10	FOR THE NORTHERN DISTRICT OF CALIFORNIA
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12	JAMES CATO, JR.,) No. C 08-0052 JF (PR)
13	Petitioner,) ORDER OF DISMISSAL
14	vs.
15	W.J. SULLIVAN, Warden,
16	Respondent.
17	
18	Petitioner, a state prisoner proceeding <u>pro</u> <u>se</u> , filed a petition for writ of habeas
19	corpus pursuant to 28 U.S.C. 2254. Petitioner has filed three earlier habeas actions with
20	this Court, in case numbers C 99-21216 JF (PR), C 05-1273 JF (PR), and C 06-0858
21	JF(PR) challenging the same conviction and sentence raised in the instant petition. In
22	case no. C 99-21216 JF (PR), the Court denied Petitioner's habeas petition on the merits
23	on February 28, 2003. The Court of Appeals dismissed Petitioner's appeal on June 19,
24	2003. In Petitioner's remaining habeas actions in this Court, the Court dismissed the
25	petition as a second or successive petition pursuant to 28 U.S.C. § 2244(b)(1). Similarly,
26	the Court will DISMISS the instant petition as a second or successive petition pursuant to
27	28 U.S.C. § 2244(b).
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DISCUSSION

A district court must dismiss claims presented in a second or successive habeas petition challenging the same conviction and sentence unless the claims presented in the previous petition were denied for failure to exhaust. See 28 U.S.C. § 2244(b)(1); Babbitt v. Woodford, 177 F.3d 744, 745-46 (9th Cir. 1999). Additionally, a district court must dismiss any new claims raised in a successive petition unless the petitioner received an order from the court of appeals authorizing the district court to consider the petition. See 28 U.S.C. § 2244(b)(2), (3).

Here, Petitioner raises claims of ineffective assistance of counsel and newly discovered forensic evidence. <u>See</u> Petition at 6. Petitioner alleges that these claims rely upon newly discovered evidence that was previously unknown to him. <u>Id.</u> The instant petition challenges the same conviction and sentence as the earlier petition in case no. C 99-21216 JF (PR), this earlier habeas petition was denied on the merits, and Petitioner has not presented an order from the Court of Appeals authorizing this Court to consider any new claims. Accordingly, this Court must dismiss the instant petition in its entirety. <u>See</u> 28 U.S.C. § 2244(b)(3)(A).

CONCLUSION

The instant petition is DISMISSED without prejudice as a second and successive petition pursuant to 28 U.S.C. § 2244(b)(2). The Clerk shall terminate any pending motions and close the file.

United States District Judge

IT IS SO ORDERED.

DATED: 1/15/08

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